

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KUMAL BURTON,

Plaintiff,

CIVIL ACTION NO. 09-CV-10893

vs.

DISTRICT JUDGE MARIANNE O. BATTANI

KAKANI, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

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ORDER DENYING PLAINTIFF'S MOTION TO COMPEL DISCOVERY
(DOCKET NO. 47)

This matter comes before the Court on the Motion to Compel Discovery filed by Plaintiff on June 10, 2010. (Docket no. 47). The motion is fully briefed. All pretrial matters have been referred to the undersigned for action. (Docket no. 7). The Court dispenses with oral argument pursuant to E.D. Mich. LR 7.1(f). The motion is now ready for ruling pursuant to 28 U.S.C. § 636(b)(1)(A).

Plaintiff moves for an Order compelling Defendants Anil Prasad, M.D., and Savithri Kakani, P.A. to respond to his letter requesting discovery. (Docket no. 47). Plaintiff shows that he mailed a letter dated May 7, 2010 to counsel for Defendants Prasad and Kakani requesting the following discovery materials: (a) all CHJ-549 (Health Care Request) forms dated April 1, 2008 - to date; (b) Plaintiff's MDOC medical record; (c) Plaintiff's medical record from Bigsby Hospital; and (d) any policy or procedure implemented by CMS which sets forth standards for determining surgical treatment. (Docket no. 47, Ex. A). Defendants construed the letter as a Request for Production of Documents and served Plaintiff with written responses and objections on May 20, 2010. (Docket

no. 48, Ex. B). Plaintiff now moves for an Order compelling production because the Defendants “den[ied] Plaintiff’s request.” (Docket no. 47).

Under Federal Rule of Civil Procedure 37(a)(3)(B)(iv), the Court can compel discovery if a party fails to properly respond to a request submitted under Rule 34. Rule 34 permits a party to serve on another party a request to produce so long as the requested materials are within the responding party’s possession, custody or control.

Defendants object to Plaintiff’s Requests for Production (a), seeking Health Care Request Forms, and (d), seeking CMS policies and procedures, on the grounds that the requests seek documents that are not in their possession, custody, or control. They also state that they are not aware of any policy or procedure maintained by CMS that regulates or sets forth the standard to be followed in determining surgical treatment. (Docket no. 48, Ex. B). The Court cannot order the Defendants to produce documents which they do not have in their possession, custody, or control. Plaintiff’s Motion to Compel relative to document requests (a) and (d) is denied.

Next, Defendants object to Plaintiff’s Requests for Production (b) and (c) to the extent they request Defendants to pay Plaintiff’s discovery costs. Defendants have offered to provide a copy of Plaintiff’s medical record to him upon receipt of payment in the amount of \$185.90, the amount it cost Defendants to obtain the record. Defendants are not obligated to assume Plaintiff’s discovery expenses, even if Plaintiff is proceeding IFP. Plaintiff’s Motion to Compel is denied as to requests (b) and (c).

Finally, Plaintiff’s Motion to Compel seeks an Order compelling Defendants to produce “the contract(s) Defendants had with CMS [from] January 1, 2008 - until expiring, and their new contract with PMS.” Plaintiff admits that he did not serve on Defendants any discovery request seeking the

contracts. The Court cannot order the Defendants to produce documents which were not sought in a proper discovery request. Accordingly, Plaintiff's Motion to Compel the production of contracts will be denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Compel Discovery (docket no. 47) is **DENIED**.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. § 636(b)(1).

Dated: August 9, 2010

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Kumal Burton and Counsel of Record on this date.

Dated: August 9, 2010

s/ Lisa C. Bartlett
Case Manager